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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Iraq, submitted by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1994/74

CONTENTS

	Paragraphs	Page
Introduction	1 - 18	2
I. THE POLITICO-LEGAL ORDER OF REPRESSION IN IRAQ	19 - 53	5
A. Introduction and summary	19 - 31	5
B. Some examples of repressive decrees	32 - 43	9
C. Access to food and health care	44 - 47	14
D. The situation of refugees	48 - 53	16
II. OBSERVATIONS ON REACTIONS BY THE GOVERNMENT OF IRAQ	54 - 60	17
III. CONCLUSIONS AND RECOMMENDATIONS	61 - 68	19
A. Conclusions	61 - 66	19
B. Recommendations	67 - 68	21
Annex: Selected decrees of the Revolution Command Council		24

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Introduction

1. The Special Rapporteur has referred in detail to the terms of his mandate in each of his previous reports to the Commission on Human Rights (E/CN.4/1992/31, paras. 1-17; E/CN.4/1993/45, paras. 1-5; and E/CN.4/1994/58, paras. 1-2). Additional references have been made in the introductory parts of his reports to the General Assembly (A/46/647, annex, paras. 1-11; A/47/367, paras. 1-6; A/47/367/Add.1, paras. 1-5; A/48/600, annex, paras. 1-9; and A/49/651, annex, paras. 1-6).

2. To summarize the terms of the mandate of the Special Rapporteur, the mandate was originally defined by Commission on Human Rights resolution 1991/74, as subsequently approved by Economic and Social Council decision 1991/256. In paragraph 5 of resolution 1991/74, the Special Rapporteur was requested to make "a thorough study of the violations of human rights by the Government of Iraq, based on all information the special rapporteur may deem relevant" and to report to the next sessions of the General Assembly and the Commission on Human Rights. By paragraphs 10 and 13 of Commission resolution 1992/71, as approved by Economic and Social Council decision 1992/241, the mandate was extended and the Special Rapporteur was also requested, "in consultation with the Secretary-General, to develop further his recommendation for an exceptional response". By paragraph 12 of Commission resolution 1993/74, as subsequently approved by Economic and Social Council decision 1993/279, the mandate of the Special Rapporteur was extended for another year. By paragraph 12 of Commission resolution 1994/74, as approved by Economic and Social Council decision 1994/278, the mandate of the Special Rapporteur was extended for a further year. By paragraph 11 of the same resolution, the Commission on Human Rights also requested the Secretary-General, "in consultation with the Special Rapporteur, to take the necessary measures in order to send human rights monitors to such locations as would facilitate improved information flows and assessment and would help in the independent verification of reports on the situation of human rights in Iraq". In order to assist the Special Rapporteur in the fulfilment of his mandate, the Commission, in paragraph 13 of resolution 1994/74, urged the Government of Iraq to "accord its full cooperation to the Special Rapporteur, notably during his next visit to Iraq".

3. With regard to specific violations, the Commission, in paragraph 2 of resolution 1994/74, expressed "its strong condemnation of the massive violations of human rights, of the gravest nature, for which the Government of Iraq is responsible, resulting in an all-pervasive order of repression and oppression which is sustained by broad-based discrimination and widespread terror", and mentioned in particular: summary and arbitrary executions; the widespread routine practice of systematic torture; enforced or involuntary disappearances; routinely practised arbitrary arrests and detention; suppression of freedom of thought, expression and association; violations of property rights; and the unwillingness of the Government of Iraq to honour its responsibilities in respect of the economic rights of the population. In paragraph 8 of resolution 1994/74, the Commission demanded that the Government of Iraq "take steps to ensure the recognition and enjoyment of the human rights of persons belonging to minorities", "immediately cease its periodic shelling of agricultural lands belonging to Iraqi Kurds" and, in relation to the southern marsh area and its Marsh Arab population, "implement the

recommendations made by the Special Rapporteur in his interim report to the General Assembly at its forty-eighth session (A/48/600, annex, para. 82)", i.e. that "the Government of Iraq immediately cease its military activities of all kinds effected against the civilian population in the southern marsh area", "immediately cease or reverse any action which may cause irreparable damage to the southern marsh environment", and also allow the immediate and unconditional stationing of human rights monitors throughout the country, especially the southern marsh area.

4. The activities of the Special Rapporteur through 8 November 1994 in fulfilment of his mandate are recounted in his interim report to the General Assembly at its forty-ninth session (A/49/651, annex, paras. 3-6). The Special Rapporteur has continued to make every effort to inform himself about the situation of human rights in Iraq through the widest range of information from a great variety of sources. To this end, and as foreseen by the Commission on Human Rights (resolution 1994/74, para. 11), the Special Rapporteur continued to send human rights monitors "to such locations as would facilitate improved information flows and assessment and would help in the independent verification of reports on the situation of human rights in Iraq" as described in the following paragraphs.

5. A first mission to the United Kingdom took place from 3 to 6 May 1994 when a staff member from the Centre for Human Rights travelled to London in order to receive up-to-date information relating to a variety of matters of concern to the Special Rapporteur. During the visit to London, the staff member met with a wide range of persons and received testimony, together with supplementary information in documentary, photographic and video form, relating to allegations of recent human rights violations.

6. Materials received in London were reviewed by the Special Rapporteur during his visit to Geneva at the end of May 1994 in order to participate in the meeting of special rapporteurs/representatives/experts and chairmen of working groups which had been convened pursuant to Part II, paragraph 95, of the Vienna Declaration and Programme of Action. In that connection, the Special Rapporteur wishes to indicate his support for the continuation of such consultations among those responsible for implementing the special procedures of the Commission on Human Rights.

7. A second mission took place from 24 June to 2 July 1994 when two staff members from the Centre for Human Rights travelled to Kuwait in order to receive information concerning the fate of Kuwaitis and other persons who disappeared during Iraq's occupation of Kuwait. The fate of this particular group of persons forms part of the mandate of the Special Rapporteur as a result of paragraph 4 of Commission resolutions 1992/71 and 1993/74 and paragraph 5 of Commission resolution 1994/74.

8. Faced with reports of a continuing flow of refugees, principally Marsh Arabs, arriving in the south-western part of the Islamic Republic of Iran from the southern marsh area of Iraq, the Special Rapporteur sent a third mission of two Centre for Human Rights staff members in August 1994. Serving in the capacity of human rights monitors pursuant to paragraph 11 of Commission resolution 1994/74, the staff members visited the Islamic Republic of Iran from 15 to 25 August 1994, concentrating on the south-western province of

Khuzestan in the region of the frontier with south-eastern Iraq. Both testimonial and documentary evidence (including photographs and video recordings) were received during the mission.

9. Materials received in Kuwait and the Islamic Republic of Iran were reviewed by the Special Rapporteur during his visit to Geneva on 5-6 October 1994.

10. In his continuing effort to obtain the most accurate and up-to-date information on the situation of human rights in Iraq, the Special Rapporteur requested that one Centre for Human Rights staff member be sent to Lebanon in early November 1994 in order to receive testimonies and reports from Iraqi citizens residing in or visiting Beirut.

11. In response to new information available from persons recently arrived in the United Kingdom, the Special Rapporteur again sent a staff member from the Centre for Human Rights to London from 22 to 25 November 1994. Testimonies, supported by documentary materials, were received on behalf of the Special Rapporteur.

12. On 25 November 1994, the Special Rapporteur presented his interim report on the situation of human rights in Iraq to the forty-ninth session of the General Assembly at United Nations Headquarters.

13. On 13 January 1995, the Special Rapporteur visited Geneva in order to evaluate the information received from the missions to Lebanon and the United Kingdom.

14. Throughout the course of 1994, testimonies continued to be received from refugees who continue to leave Iraq, despite the impediments to departure and other difficulties in leaving reported by many. Other forms of information, ranging from amateur video recordings to analytical reports and scientific studies, continue to be received.

15. Having taken into consideration the information described above, and having acted in the fulfilment of his mandate as also described above, the Special Rapporteur submits the present report to the Commission on Human Rights at its fifty-first session.

16. The information contained in this report is current through 31 January 1995.

17. In each of his previous reports to the Commission on Human Rights, the Special Rapporteur has detailed the legal framework within which he assesses the compliance by Iraq with its obligations under international human rights law. In presenting this his fourth report to the Commission, the Special Rapporteur will not repeat again, nor summarize, the breadth of standards applicable to the situation of human rights in Iraq. It should suffice to state that Iraq is a State party to almost all of the main human rights treaties (see E/CN.4/1994/58, para. 13), having also acceded to the 1989 Convention on the Rights of the Child on 15 June 1994. However, it is necessary at the same time to recall that there are no special circumstances which Iraq may invoke by way of permissible excuses under international law,

particularly since Iraq has never derogated from any of its specific obligations (see E/CN.4/1992/31, paras. 22-39). Moreover, while all of Iraq's human rights obligations maintain their normal legal effects under international law, Iraq is under special legal obligations pursuant to a series of Security Council resolutions, notably resolutions 661 (1990), 666 (1990), 687 (1991), 688 (1991), 706 (1991), 712 (1991) and 778 (1992).

18. While the above applies generally within the jurisdiction of Iraq, the Special Rapporteur has previously observed the peculiar situation which persists in that part of the territory of the State of Iraq from which the Government of Iraq withdrew its administration in October 1991 subsequent to the armed intervention of the allied forces of certain States (see E/CN.4/1994/58, paras. 16-18). In so far as the Government of Iraq, therefore, disclaims responsibility in the region while no other State has continued to occupy the territory, the Special Rapporteur has argued that there remains "a residual obligation on the international community to fulfil the humanitarian needs of the affected population" (ibid., para. 18). The Special Rapporteur notes in this regard that, throughout the last year, there has been no change in the legal situation of this predominantly Kurdish region.

I. THE POLITICO-LEGAL ORDER OF REPRESSION IN IRAQ

A. Introduction and summary

19. Throughout the last 4 years of his reporting, the Special Rapporteur has produced 9 separate documents detailing, through a total of almost 500 pages, a variety of serious human rights violations of a civil, cultural, economic, political and social nature. These reports have taken into consideration thousands of pages of testimony, thousands of official Iraqi documents (selected from among approximately 4 million documents to which the Special Rapporteur has access), aerial and satellite photography, almost 100 amateur video recordings, some important audio recordings, and a variety of physical evidence ranging from flesh wounds to chemical residues in soils. The Special Rapporteur has also taken into consideration expert opinions, scientific studies, medical diagnoses and analytical reports produced by a wide variety of persons. Further, visits have been conducted to 10 countries in order to receive and verify information of all kinds and from all types of sources.

20. As a result of his work so far, the Special Rapporteur drew detailed conclusions in his last report to the Commission (E/CN.4/1994/58, paras. 142-189) concerning the factual situation, the causes of the violations which he determined to be widespread, and also the responsibilities (both of the State and also of named individuals) for those violations. Thereupon, the Special Rapporteur offered a comprehensive list of recommendations to improve the situation of human rights in Iraq.

21. To the knowledge of the Special Rapporteur, the Government has not so far implemented the recommendations of the Special Rapporteur. Nor has there been a significant change in any of the structures of the State which the Special Rapporteur believes are the cause of widespread and systematic violations of human rights in Iraq. To the contrary, evidence shows that these structures have been employed to cause yet more violations.

22. In his last report to the Commission, the Special Rapporteur emphasized that the core of the problem in Iraq lay in the structure of power which enabled gross abuses constituting serious human rights violations (E/CN.4/1994/58, paras. 159-184). To recapitulate, the Republic of Iraq is structured so as to concentrate enormous powers in extremely few hands, with all power ultimately situated in the person of the President of the Republic. The President rules through a Revolution Command Council which has the power to override the Provisional Constitution at any time and without judicial review. Parallel to the normal institutions of government exists an extremely powerful Baath Party which enjoys special status especially pursuant to the Leading Party Act No. 142 of 1974. While the Special Rapporteur concluded in his last report to the Commission that "the politico-legal organization of the Republic of Iraq constitutes of itself a systematic cause of human rights violations" (E/CN.4/1994/58, para. 177), he went on to demonstrate that powers are abused routinely and grossly.

23. Since the politico-legal structure of the Republic of Iraq has not changed in the last year, human rights continue to be violated in Iraq. Not surprisingly, allegations relating to incidents in all parts of Iraq which detail such violations continue to be received.

24. While the Special Rapporteur has again received allegations of all types of violations, and while he could, therefore, again present a long list of such violations (which the Government of Iraq would again flatly deny or seek to excuse), he will refer only to some recent allegations by way of examples. In this connection, the Special Rapporteur draws attention to his interim report to the General Assembly (A/49/651, annex) in which he recounts allegations regarding: Kuwaitis and third country nationals who continue to be missing almost four years after the end of the Gulf War; the situation of the Marsh Arabs; legal applications of cruel and unusual punishments; political killings; and infringements upon the rights to food and health care.

25. Killings of all types continued to be reported in Iraq throughout the last year. Extrajudicial executions have been reported in particular in relation to military operations in the southern marsh area of Iraq where civilian settlements are said to have been shelled and razed. The institution of the death penalty on a yet wider scale has given rise to more summary and arbitrary executions, both within the military and among the civilian population. In particular, the wholly disproportionate application of the death penalty, e.g. to anyone caught in possession of foreign currency not obtained through government exchanges, constitutes a clear violation of article 6 (2) of the International Covenant on Civil and Political Rights. The deaths of a number of persons said to have died under torture in detention (their bodies having been returned to their families bearing the marks) also constitute extrajudicial executions. For example, the body of Mohammad Abid Al-Taiee of Diyala who had been detained, was said to have been returned to his family in the first week of September 1994 bearing signs of severe torture. In the last week of August 1994, the bodies of detainees Mohammad Ayoub Aldelaimee, Weleed Shaker Mahmood Alubaidi, Ma'an Wheyeb, Mohammad Qasim Hammoudi, Hamid Abid Al-Taiee and Zuhair Hussein Al-Haialee were allegedly returned to their families each with their eyes plucked out. The Special Rapporteur has also received very recent and credible allegations of thallium poisoning (supported by certification of medical diagnosis) which he is investigating.

26. The Special Rapporteur has also continued to receive reports of widespread arbitrary arrest and detention. Some of those arbitrarily arrested and detained several years ago have still not been released. For example, one group of relatives of allegedly detained persons has recently submitted a 50-page report detailing the story of thousands of families of Iraqi citizens "of Persian ancestry" who were expelled from Iraq between 1980 and 1990 in the course of which many able-bodied men were arbitrarily arrested and detained; it is believed these persons are at Qalat al-Salman prison in southern Iraq, since relatives claim to have visited many of the detained there over a period of years. During the past year, the Special Rapporteur has received several allegations of arbitrary arrests and detentions of groups of persons in southern Iraqi communities. These have often taken place in the context of military operations. In this regard, the Special Rapporteur notes the legalization of arbitrary detentions pursuant to, inter alia, Revolution Command Council Decree Nos. 70 and 74, described below, which grant powers of detention to the Baath Party essentially without any checks; as long as such decrees exist, the practices of arbitrary arrest and detention will be widespread. The attention of the Special Rapporteur has also been drawn by the Government of the Islamic Republic of Iran to reports that Iranian citizens are effectively being detained ("held against their will"); the Special Rapporteur shall be investigating the matter in more detail.

27. On the subject of disappearances, it is to be noted that Iraq remains far and away the State with the largest number of cases having been taken up by the Working Group on Enforced or Involuntary Disappearances; as of the end of 1994, there were 15,781 cases still unresolved with hundreds more cases waiting to be taken up (see E/CN.4/1995/36, Annex III and para. 241). There also continue to be hundreds of foreigners missing in Iraq or for whom Iraq is responsible. As detailed in his interim report (A/49/651, annex, paras. 12-33), there remain over 600 cases of missing Kuwaiti and third country nationals who disappeared during Iraq's illegal occupation of Kuwait. While the Government of Iraq began cooperating again some six months ago with the multinational tripartite commission (grouping Iraq, Kuwait and its allies, and the International Committee of the Red Cross) in an effort to resolve the cases, the Special Rapporteur is unaware of any case having been resolved. Since December 1994, a "technical committee" has been attempting to review the case files. It is also reported that the Government of Iraq has provided explanations for some 100 cases of persons most of whom it acknowledges were arrested, detained and moved by Iraqi forces, but who subsequently fled or disappeared as a result of the allied bombing of Basra in January/February 1991. In addition to these cases, the Special Rapporteur has received information from the Kingdom of Saudi Arabia concerning 12 Saudi citizens missing in Iraq.

28. In addition to reports of attacks on the personal security and integrity of persons in Iraq, the Special Rapporteur continues to receive information relating to the severe constraints, indeed virtual prohibitions, on the freedoms of opinion, expression and association. These have been detailed by the Special Rapporteur in his previous reports and proceed directly from the politico-legal organization of the State. However, it is necessary to repeat some of the salient aspects of these freedoms which are so integral to human dignity. First, with respect to opinion, Iraq remains essentially a one-party State where the Baath Party holds a "leading role" according to Law No. 142

of 13 October 1974; as noted by the Special Rapporteur in his report to the fiftieth session of the Commission on Human Rights (E/CN.4/1994/58, para. 85), even the still unimplemented Political Parties Act of 1991 fails to provide for free political association or expression in so far as the Act provides for government control over prospective parties and reserves exclusively for the Baath Party the right to carry out political activities among certain parts of the population. According to Law No. 142, which functions in conjunction with a series of other laws and decrees establishing State authorities and prohibiting independent means of expression, the State and the Baath Party control the means of information and even cultural expression. Such publication and expression as are permitted are subject to prior authorization and to censorship by the Department of Censorship established pursuant to Decree No. 95 of 1986; there is also censorship of mail and the cinema. The Iraqi Press Code enumerates a long list of forbidden subjects, and another list of subjects for which authorization is required prior to publication. The means of communication are controlled, either directly or indirectly, almost exclusively by the State or the Baath Party. Perhaps most indicative of the situation is Decree No. 840 of 4 November 1986, still in force, which imposes severe penalties, including death, for insulting the President or other institutions of the Baathist Republic. As detailed by the Special Rapporteur in several of his reports, there has also been serious interference with religious expression, including prohibitions of prayers and arrests and detentions of imams and clerics. Freedom of association is also severely constrained in so far as the Government permits only single State-controlled unions to exist.

29. Control over people's lives is also exercised by restrictions on freedom of movement, both within the State and on exiting and re-entering the State. Exit from Iraq is subject to obtaining a valid passport and exit visa, which is not easy; in the last year, various categories of persons have been either prohibited from travelling abroad (e.g. many retired professionals and most university professors) or very much restricted (e.g. medical doctors, who must post a 1 million dinar guarantee of return). All persons must purchase the exit visa for 40,000 dinars (the equivalent of 1½ years' salary for an average civil servant). Travelling abroad is also made almost impossible because of prohibitions against taking currency or valuable goods. Women under 45 years of age are prohibited from travelling abroad without a male relative. Within the country, internal deportations have occurred on a wide scale, and reports indicate that they continue to occur in the context of Arabization programmes in Kirkuk and Mosul. In addition, information has been received indicating that persons not resident in Baghdad prior to April 1991 may be forced to leave Baghdad as a measure to relieve the pressure of economic demands on the city.

30. The situations of many ethnic and religious communities also remain extremely difficult. Minority protection in the form of cultural and educational rights are generally not accorded. Reports continue to be received alleging interference with, and direct attacks on, religious establishments, particularly that of the Shiah. The Marsh Arab community remains under serious threat from direct attacks and destruction of its essential habitat. The predominantly Kurdish region in the north suffers especially under a harsh internal economic embargo strictly enforced by the

Iraqi authorities, such that the social and cultural life of the community is undermined. No signs of improvement are to be observed for any of these communities.

31. As noted above, the politico-legal structures of the Republic of Iraq are the essential cause of human rights violations in Iraq. This is most apparent with respect to decrees which have been issued by the Revolution Command Council in the last year.

B. Some examples of repressive decrees

32. In his interim report to the General Assembly, the Special Rapporteur reported on certain legal applications of cruel and unusual punishments pursuant to decrees of the Revolution Command Council (A/49/651, annex, paras. 44-71). It is the opinion of the Special Rapporteur that these decrees reveal the complete failure of the Government to respect its obligations under international human rights law. Indeed, it is surely a rarity in the contemporary international community that a Government not only boldly pronounces laws which stipulate disfigurements of persons within its jurisdiction, but shamelessly announces and advertises the existence of these punishments.

33. The Special Rapporteur commented in his interim report on eight decrees adopted by the Revolution Command Council between 4 June and 5 September 1994. These decrees (Nos. 59, 92, 93, 109, 115, 116, 117 and 145) were reproduced in the appendix to the interim report. As documented in that report, there is no doubt that these decrees have been implemented and, according to information which has since been received, they continue to be implemented. Certainly, these decrees, which do not concern isolated incidents but create generally applicable law, continue to be in force throughout Iraq - in continuous violation of international standards.

34. Following further examination of decrees promulgated in 1994, the Special Rapporteur shall comment here on the violative nature of eight more decrees. However, prior to describing the additional decrees, the Special Rapporteur wishes to refer again to the continuing validity of Decree Nos. 59, 109 and 115 (see annex) in so far as their application is directly related to the implementation of other decrees. Decree No. 59 of 4 June 1994 prescribes: amputation of the right hand at the wrist for a first offence of theft over 5,000 Iraqi dinars (well under US$ 10 at the present real rate of exchange); amputation of the left foot at the ankle for a second offence; and death for a third offence. Decree No. 109 of 18 August 1994 prescribes the "tattooing" or "branding" (it appears to be a branding in practice) with an "X" between the eyebrows of all persons having suffered legally prescribed amputations. Decree No. 115 of 25 August 1994 prescribes the cutting off of the auricle of one ear of each person evading military service, deserting military service, or sheltering any evader or deserter of military service. Decree Nos. 59, 109 and 115 prescribe cruel and unusual punishments in violation of article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights. In addition, Decrees 109 and 115 are retroactive in their effects and thus constitute violations of article 15 of

the International Covenant on Civil and Political Rights. Decrees 59, 109 and 115 are reproduced in the annex to this report as document Nos. 1, 2 and 3, respectively.

35. With respect to the procedural requirements of implementing legally prescribed amputations, the Special Rapporteur draws attention to Revolution Command Council Decree No. 96 adopted, upon the signature of President Saddam Hussein, on 28 July 1994 (subsequently published in the Official Gazette of the Republic of Iraq, No. 3521, of 1 August 1994 at p. 250). Decree No. 96 is reproduced in the annex to this report as document No. 4. While the Special Rapporteur has already described the entire application of the amputation punishments as a gross violation of human rights, it is to be noted here that the procedural requirements of implementation specified in paragraph V constitute a clear diversion of limited medical technologies away from health-oriented applications in order to implement disabling and disfiguring punishments. Moreover, with regard to the provision of paragraph VI, the Special Rapporteur considers that postponement of amputation of the hand of a pregnant woman until four months after giving birth constitutes very little in the way of a humanitarian exemption for the benefit of the pregnant woman and new mother.

36. On 21 June 1994, the Revolution Command Council, upon the signature of President Saddam Hussein, adopted Decree No. 70 (subsequently published in the Official Gazette of the Republic of Iraq, No. 3517, of 4 July 1994 at p. 206). Decree No. 70 is reproduced in the annex to this report as document No. 5. Paragraph I of Decree No. 70 stipulates as follows:

> "1. The leadership of the local section of the Arab Baath Socialist Party and the people's council in any district shall each be empowered to detain, for a period of one year, anyone who monopolizes, by hoarding and refusing to sell, any commodity similar to those listed on the ration card. A repeated offence shall be punished by detention for a period of three years, with closure of the establishment and cancellation of the licences issued to it. Such decisions shall be taken by a majority vote.
>
> "2. The penalties prescribed in paragraph 1 above shall apply to any farmer who refuses to sell cereals to the competent official body."

The provisions of paragraph I clearly bestow on non-judicial authorities powers of arrest and detention in violation of articles 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. It is also to be observed that the absence of prescribed definitions or judicial controls for terms such as "monopolizes" and "hoarding" invites arbitrary arrests and detentions on a wide scale, particularly in the prevailing economic circumstances in Iraq. In addition, the provision of paragraph I (2) is particularly disturbing because the State largely controls prices in the agricultural sector, and concern has been expressed that farmers who had refused to sell their crops at prices set below production costs are now liable to lengthy detention and the closure of their operations. Concerning the determinations made by the local Baath Party or people's councils, it is further to be noted that paragraph II denies any judicial review since appeals may only be made to the Party leadership at the branch level, whose "ruling on

this matter shall be final". Worse still, paragraph V of Decree No. 70 provides for the possibility that a farmer who refuses to sell until offered a price he considers fair may be subject to conviction for "sabotage of the national economy" which, according to paragraph VI, carries the penalty of amputation and, in conjunction with subsequent Decree No. 109, the penalty of branding. In fact, paragraph VI provides that the punishments of amputation and branding will be applied in addition to, and upon expiration of, the punishment of detention, i.e. they would violate the principle of non bis in idem in violation of article 14, paragraph 7, of the International Covenant on Civil and Political Rights. Finally, the Special Rapporteur considers that the provision of paragraph VII, which substitutes between 7 and 15 years' imprisonment for amputation in the case of a convicted minor, constitutes little in the way of a humanitarian exception for young persons and violates the obligations of Iraq pursuant to article 37 (b) and (d) of the Convention on the Rights of the Child.

37. On 23 June 1994, the Revolution Command Council, upon the signature of President Saddam Hussein, adopted Decree No. 74 (subsequently published in the Official Gazette of the Republic of Iraq, No. 3517, of 4 July 1994 at pp. 207-208). Decree No. 74 is reproduced in the annex to this report as document No. 6. Paragraph I of Decree No. 74 stipulates as follows:

> "The leadership of the local section of the Arab Baath Socialist Party and the people's council in any district shall each be empowered to detain, for a period of one to three years, anyone who sells or purchases foreign currency outside the licensed offices or, to that end, conspires with employees of licensed offices or banks. In the event of a repeated offence, the period of detention shall be five years. In both cases, the detention decision shall be taken by a majority vote."

The provisions of paragraph I again clearly bestow on non-judicial authorities powers of arrest and detention in violation of articles 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and they invite arrest and detention on a wide scale, particularly in the prevailing economic circumstances in Iraq. Again, there is no recourse for the accused to a judicial instance: appeal may only be to the Baath Party's branch leadership whose "ruling on this matter shall be final". Again, accused persons may also be subject to amputation and branding for "sabotage of the national economy" if the Baath Party leadership at the local level, or the people's council, so determines. And again, minors are to benefit from commutation of amputation punishments to lengthy imprisonment in violation of article 37 (b) and (d) of the Convention on the Rights of the Child.

38. On 27 August 1994, the Revolution Command Council, upon the signature of President Saddam Hussein, adopted Decree No. 120 (subsequently published in the Official Gazette of the Republic of Iraq, No. 3526, of 5 September 1994 at p. 278). Decree No. 120 is reproduced in the annex to this report as document No. 7. Paragraph I of Decree No. 120 stipulates as follows:

> "No person convicted of the offence of embezzlement or theft of State funds, or of any other deliberate offence involving such funds, shall be released after serving his sentence unless the said funds or the assets into which they have been converted or for which they have been exchanged, or their value, have been recovered from him."

This provision, coupled with the stipulation of paragraph II which prohibits any benefit from probation, subsequent amnesty or other decrees mitigating penalties, essentially prescribes indefinite imprisonment for persons who are unable to perform restitutio in integrum. At a minimum, the punishment of imprisonment is uncertain in duration and, since stolen properties may easily be consumed, destroyed, lost or even "stolen" from the thief, there is the very real impossibility of performance of restitutio in integrum. As such, the punishment may very likely be disproportionate. Therefore, the Special Rapporteur observes that the arbitrary nature of the punishment prescribed in Decree No. 120 constitutes a clear violation of article 9 of the International Covenant on Civil and Political Rights. In addition, the retroactive effect of paragraph III of Decree No. 120 constitutes a clear violation of article 15 of the International Covenant on Civil and Political Rights.

39. On 28 August 1994, the Revolution Command Council, upon the signature of President Saddam Hussein, adopted Decree No. 125 (subsequently published in the Official Gazette of the Republic of Iraq, No. 3526, of 5 September 1994 at p. 279). Decree No. 125 is reproduced in the annex to this report as document No. 8. The provisions of Decree No. 125 stipulate that foreign currency dealings conducted outside licensed offices and banks will result in the confiscation of the currency and implementation of the penalties described in Decree No. 74, i.e. detention and possible amputation and branding - presumably upon a determination made by the Baath Party leadership or a people's council without judicial supervision. This Decree is further evidence of the absence of the rule of law in Iraq and is a clear violation of articles 10 and 11 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights, and possibly also article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights.

40. A most disturbing, but no longer surprising, decree is Decree No. 130 adopted by the Revolution Command Council, upon the signature of President Saddam Hussein, on 30 August 1994 (subsequently published in the Official Gazette of the Republic of Iraq, No. 3527, of 12 September 1994 at p. 286). Decree No. 130 is reproduced in the annex to this report as document No. 9. Paragraph I of Decree No. 130 provides as follows:

> "The Principal Private Secretary of the President shall be empowered to form a commission to investigate one or more specific offences. The commission shall be vested with the powers of an examining magistrate."

This Decree creates a private and personal "judicial" and prosecutorial mechanism in the person of the President's Principal Private Secretary who, of course, is wholly dependent upon and partial to the President. Such a decree as No. 130 makes a mockery of any pretence of separation of powers or the rule of law in Iraq. Specifically, Decree No. 130 is in violation at least of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights.

41. In addition to the above-noted decrees, the Special Rapporteur is extremely disturbed by the continuously increasing number of applications of the death penalty in Iraq. For example, Decree No. 95 of 27 July 1994

provides in its paragraph I as follows: "The death penalty shall be imposed on anyone who smuggles an automobile, a truck or any machinery or apparatus used for drilling, earth-moving or any similar purpose outside Iraq or to a hostile body." As another example, Decree No. 118 of 27 August 1994 provides in its paragraph I as follows:

> "Clause I of Revolution Command Council Decree No. 155 of 21 October 1993 is hereby rescinded. It shall be replaced by the following text:
>
> "1. The death penalty shall be imposed on anyone who organizes a gang for purposes of pandering, as defined in article 1 of the Anti-Prostitution Act No. 8 of 1988.
>
> "2. The assets owned by any or all of the persons referred in paragraph 1 above, consisting in movable or landed property used as premises for purposes of pandering, shall be confiscated."

The Special Rapporteur observes that these and many other of the very many applications of the death penalty in Iraq constitute violations of article 6 (2) of the International Covenant on Civil and Political Rights in so far as the death penalty is disproportionate to the seriousness of the crime.

42. With respect to the extension of powers of arrest, detention, effective judicial interpretation and other powers to the leadership of the Baath Party at the local level and to people's councils pursuant to Decree Nos. 70 and 74, the Special Rapporteur observes that such powers enhance the impunity enjoyed by privileged forces and members of the Baath Party in Iraq. In this connection, the Special Rapporteur recalls the provisions of a Revolution Command Council Decree of 21 December 1992 which guarantee impunity for members of the Baath Party in their efforts to combat enemies of the regime in the course of which they may damage property, cause bodily injury and even death. Given the prevailing economic circumstances in Iraq, conferring such enormous powers on so many clearly encourages arbitrary punishments, confiscations and other acts for personal gains. In sum, such decrees underline the absence of the rule of law in Iraq.

43. In addition to the specific decrees mentioned above, the Special Rapporteur further observes that virtually all such decrees have been adopted pursuant to article 42 (a) of the Provisional Constitution of Iraq, which the Special Rapporteur has previously criticized as granting virtually dictatorial power to the Revolution Command Council and, in fact, the President (see E/CN.4/1994/58, paras. 164, 168-170 and 176). Although the Government of Iraq has argued, notably in its "reply" to the Special Rapporteur circulated at the forty-ninth session of the General Assembly, that this power is "not executive but legislative" and is used "where the National Assembly is not in session" (A/49/394, para. 140), the Special Rapporteur observes that reference to it is so frequent that either the National Assembly is rarely in session or else the power is used frequently when the National Assembly is in session. In fact, the Special Rapporteur has argued in his previous report that the purported powers of the National Assembly are essentially irrelevant owing to the

structure of power in Iraq (see E/CN.4/1994/58, paras. 159-176). It is also, therefore, immaterial whether the power of article 42 (a) is characterized as "executive" or "legislative".

C. Access to food and health care

44. The Special Rapporteur has referred to the rights to food and health care in every one of his previous reports (A/46/647, annex, paras. 52-54, 55 and 95-98; E/CN.4/1992/31, paras. 81-83, 138, 143 (w), 145 (o) and (p), and 158; A/47/367, para. 14; A/47/367/Add.1, paras. 6-14, 56 (a), (b) and (c), and 58 (a), (b) and (c); E/CN.4/1993/45, paras. 67-72 and 185; A/48/600, annex, paras. 33-42, 44-46, 58-59 and 62-88; E/CN.4/1994/58, paras. 72-79, 152 and 186; and A/49/651, annex, paras. 89-98). Unfortunately, he has had the sad duty of recording a constantly deteriorating situation for most of the population, especially the most vulnerable segments comprised of children, pregnant and lactating mothers, the elderly, the disabled and the increasingly large number of destitute. Reports received from reliable sources over the last several months recount an ever-worsening situation. In particular, the Special Rapporteur has paid careful attention to the reports and assessments of United Nations specialized agencies in the context of the United Nations Inter-Agency Humanitarian Programme in Iraq. At the same time, the Special Rapporteur has observed the deteriorating situation as recorded by the Government of Iraq. In the absence of the Government's cooperation in allowing the Special Rapporteur to visit Iraq, the Special Rapporteur is forced to rely upon these reports together with the testimonies he receives from persons who have left Iraq. However, since these reports and testimonies are essentially congruent in their depiction of a comprehensively deteriorating situation, the Special Rapporteur sees no reason to doubt them.

45. As observed by the Special Rapporteur on several previous occasions, the actual situation is not very much at issue: it is well accepted that millions of innocent people are suffering. The question is one of responsibility. On this important point, the Special Rapporteur must reiterate the fact that there exists no embargo upon the import by Iraq of medicaments or foodstuffs for humanitarian purposes; paragraph 3 (c) of Security Council resolution 661 (1990) explicitly provides for this exemption to the other economic sanctions imposed upon Iraq subsequent to its illegal occupation of Kuwait. In addition, the Government of Iraq is under specific obligation to take advantage of available resources to secure the rights to food and health care of its citizens pursuant to articles 2, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights. In 1994, Iraq even accepted additional international obligations relating to the rights of children pursuant to articles 24 and 27 of the Convention on the Rights of the Child. Moreover, the Government holds special obligations arising from Security Council resolution 688 (1991). Among the most evident opportunities to avail itself of medicaments and foodstuffs are those made possible through cooperation under Security Council resolution 688 (1991), which demands that Iraq cooperate with international humanitarian organizations for assistance throughout the country, and also Security Council resolutions 706 (1991) and 712 (1991) which present the possibility of a United Nations-supervised sale of oil enabling the purchase by Iraq of large quantities of desperately needed medicaments and foodstuffs.

46. Aside from the general lack of foodstuffs and medicaments which affect most of the population, the Special Rapporteur must emphasize yet again that the Government of Iraq is wholly responsible for discriminatory policies in the distribution of such resources as do exist. There remains in force a strict internal economic blockade on the northern territories, from which the Government has withdrawn its administration (despite the Government's contribution of very small rations to the region) and the cut-back of electricity to Dohuk Governorate 18 months ago also remains in force, depriving almost 1 million people of adequate electricity for basic services including, among other things, clean water and medical care. The cut in the electricity supply has also compounded the problem of displacement in the northern region as large numbers of people have essentially been forced to relocate; some 100,000 persons in the Aqrah and Shekan areas of Dohuk had to move when the supply of electricity from Mosul was cut on 4 August 1994. In the southern parts of the country, the Government has restricted the access of international humanitarian organizations; United Nations agencies were officially instructed to close their offices in the south in 1992, while the conditions imposed on international non-governmental humanitarian organizations are so severe as to result in only four such organizations being active in that part of the country at present. Nothing in the last year has revealed a basic change in these discriminatory policies, which constitute clear violations of Iraq's international obligations.

47. To return to the Government of Iraq's possibility of obtaining badly needed resources through Security Council resolutions 706 (1991) and 712 (1991), and thereby alleviating the extremely precarious food and health situations affecting most of the Iraqi population, especially the most vulnerable segments, the Special Rapporteur notes that the Government of Iraq has so far insisted that cooperation with the United Nations, particularly in relation to the implementation of Security Council resolutions 706 (1991) and 712 (1991) and the supervised sale of "oil for food", would somehow violate the principle of sovereignty over its natural resources (see A/49/394, para. 71). While the Special Rapporteur acknowledges that the proposed supervised sale of oil does constitute a control mechanism, he observes that such supervision would function only to guarantee that those in need of the benefits of the sale do indeed receive them. In the absence of such a mechanism, it is by no means certain that any resource benefits will go to those with the greatest needs. This is the basic reason why the Security Council has required a supervised sale of oil; it is fundamentally a question of trust: if the Government had nothing to hide, it should be pleased to undertake, with complete openness and accountability, a sale of oil to benefit its long-suffering people. However, such supervision appears to be justified under the circumstances. Given that there is general agreement that the suffering of the Iraqi people is growing worse, the Special Rapporteur hopes that the Government of Iraq's position will not continue to stand in the way of benefits going to the very many who desperately need them. In this connection, the Special Rapporteur takes note of recent reports indicating some willingness on the part of the Government of Iraq to discuss the modalities of activating the "food for oil" formula available through Security Council resolutions 706 (1991) and 712 (1991), and he expresses the hope that any new discussions will not flounder again on the matter of supervision.

D. The situation of refugees

48. The Special Rapporteur commented upon the situation of refugees in his first report to the Commission on Human Rights (E/CN.4/1992/31, paras. 133-136). It was noted at that time that neighbouring States had in previous years experienced mass influxes of refugees, both from the southern and the northern parts of Iraq, especially following the uprisings of March 1991. Today, there remain hundreds of thousands of refugees in the Islamic Republic of Iran, Saudi Arabia and Turkey. Tens of thousands more de facto refugees are to be found in Jordan, while thousands more have made their way to a host of resettlement countries around the world.

49. The Iraqi Government has on several occasions, for example in a letter to the Secretary-General (A/48/875, annex), stated that the reason for the flight of refugees is that "some neighbouring States and their agents in the area are endeavouring to create a climate of instability and insecurity by spreading tendentious rumours among the people that are causing some of them to leave their homes" (para. 21). However, the reasons for flight communicated to the Special Rapporteur by several independent sources are different. Refugees who recently arrived at Himmet and Ulm-Na'aj along the southern Iraq-Iran frontier, among other places, claim that the reasons for their flight are: increased oppression from the Iraqi Government, including arbitrary detention and executions; deteriorating living standards; religious persecution; draining of the marshes resulting in loss of habitat and livelihood, etc.

50. Since the Government launched its irrigation and agricultural projects resulting in extensive draining of the marshes, there has been a continual influx of refugees into the Islamic Republic of Iran from the southern marsh region of Iraq. These refugees claim that their principal reason for fleeing is directly connected with the draining of the marshes. They claim that they have lost the possibilities of fishing, buffalo-herding and cultivating crops such as date palms, vegetables and reeds. The increased difficulty in finding drinking water has also made it impossible to live in their areas of origin. At the same time, the draining has made access to the area easier for government troops pursuing suspected criminals, but it is also harder for refugees to reach the border. It is, however, mostly those persons who are not involved in anything that could remotely be characterized as "anti-Government activities" who suffer the most. Refugees from these areas claim that they fled under difficult conditions and an unknown number of persons are alleged to have perished along the way, due to injuries or hunger and thirst.

51. In a recent report submitted to the Special Rapporteur, the situation along the strip of road on the Iraq-Iran border known as "Himmet" is characterized as being the most serious. In early January 1995, the United Nations High Commissioner for Refugees reported that more than 4,000 Iraqi refugees were at that location. The conditions are known to be very poor with many refugees arriving malnourished and suffering from disease.

52. The situation of refugee women, and also the children for whom they are usually responsible, is especially difficult. Many of them suffer from inadequate nutrition, anaemia, diarrhoea and various kinds of infections. During flight, and until they are properly settled, pregnant women often have very limited or no access to obstetrical care, and they suffer accordingly.

53. Overall, it is clear that the choice of flight is a hard choice, made only out of necessity. Many sources describe the state of mind of these refugees as one of continuing fear. These persons are all victims of the current situation of human rights in Iraq.

II. OBSERVATIONS ON REACTIONS BY THE GOVERNMENT OF IRAQ

54. While still having failed to respond to most of the questions previously put by the Special Rapporteur (for a list of some unanswered questions, see A/47/367/Add.1, para. 55), and having essentially refused to either receive the Special Rapporteur in the country or to respond directly to the Special Rapporteur on any matter for well over one year, it is to be observed that the Government of Iraq has submitted several documents to United Nations organs responding to matters raised by the Special Rapporteur. For the most part, however, the Government of Iraq's responses may be summarized as denial, excuse or obfuscation. For example, almost every document submitted by the Government of Iraq to any body or agency of the United Nations asserts the "continuing aggression" of certain States against Iraq in maintaining an unjust embargo causing a severe lack of food and medicaments for the Iraqi people. However, the Government fails, systematically and clearly purposefully, to acknowledge that the economic sanctions placed upon Iraq pursuant to Security Council resolution 661 (1990) explicitly exempt medicaments and foodstuffs for humanitarian purposes, nor does the Government acknowledge the existence of obligations under Security Council resolution 688 (1991) to receive international assistance or the opportunity to obtain medicaments and foodstuffs through a supervised sale of oil pursuant to Security Council resolutions 706 (1991) and 712 (1991). Further, in response to the Special Rapporteur's analysis of a politico-legal order featuring innumerable decrees which constitute clear violations of international standards and for which the Government alone is responsible, the Government seeks only to justify such an order by references to its sovereign rights and to excuse specific decrees by references to the need to suppress criminal activities and serve the public interest.

55. The Special Rapporteur believes that the facts he has brought to the attention of the United Nations together with his analysis of the causes of, and responsibilities for, those facts remain valid. He need not at this time repeat those assessments. However, in order to maintain clarity concerning some specific matters, the Special Rapporteur wishes to respond to certain arguments advanced by the Government of Iraq in its "reply" to the Special Rapporteur which was circulated at the forty-ninth session of the General Assembly (A/49/394 of 19 September 1994).

56. As a general matter, the Special Rapporteur observes that he has several times explained the manner in which he collects and assesses information. A summary of the types and volume of information he has received is offered in paragraph 19 of the present report. Further detailed accounts and explanations have been provided in documents E/CN.4/1992/31 at paragraph 147 and E/CN.4/1993/45 at paragraphs 164-179. With respect to the specific allegation of the Government of Iraq that the Special Rapporteur has sent human rights monitors into Iraq without the prior approval of the Government (A/49/394, para. 5), the Special Rapporteur wishes to repeat that he has always respected the territorial integrity of the State of Iraq and that, on

the specific occasion at issue, staff members from the Centre for Human Rights were sent in December 1993 to the border-crossing between Turkey and Iraq where, literally at the border, they received testimonies and other information from Iraqi citizens in northern Iraq. Regarding the specific allegation that the over 4 million official documents of the Government of Iraq found in Government offices during the March 1991 uprisings, and subsequently transferred to the care of Middle East Watch, are forgeries (A/49/394, para. 6), the Special Rapporteur wishes only to summarize his earlier assessment (see E/CN.4/1993/45, paras. 165-168) that, upon scrutiny, the Government's argument posits a fantastic feat unprecedented in global history which would have been achieved by a resourceless Kurdish population in the course of conflict and flight; it is also to be recalled that the Government of Iraq has in fact admitted to having lost almost all its documents in the northern region - a fact it has invoked as an excuse for its inability to reply to other queries of the Special Rapporteur.

57. On the subject of torture, the Government of Iraq argues that torture is expressly prohibited under Iraqi law and that torturers have been convicted for such offences (A/49/394, para. 12). The Special Rapporteur simply observes that the existence of a legal prohibition, coupled with an occasional prosecution, is insufficient refutation of the very many allegations of torture and other cruel, inhuman or degrading treatment or punishment which come regularly to his attention from all parts of the country. Indeed, cruelty appears to be the norm in Iraqi detention centres. However, the clearest indication that torture and other cruel, inhuman and degrading treatment and punishments continue in Iraq is apparent in the many decrees issued in the summer and fall of 1994 which explicitly prescribe amputations and disfigurement. The Special Rapporteur must conclude in this regard that a Government which is capable of publicly declaring and publicizing such clear violations of human rights is no doubt capable of even worse conduct behind closed doors.

58. Turning to the Government of Iraq's denial of arbitrary arrest or detention by reference to provisions of the Provisional Constitution, Code of Criminal Procedure and the Penal Code which require for arrest a warrant issued by a magistrate or a court, the Special Rapporteur observes that a wide variety of agencies and persons in Iraq, e.g. security services, military intelligence and Baath Party members, are empowered to carry out arrests and detentions without a warrant and without judicial review. Specifically, and as noted above, Revolution Command Council Decree Nos. 70 and 74 grant the power of long detention to "the leadership of the local section of the Arab Baath Socialist Party and the people's council". In addition, a Revolution Command Council Decree of 21 December 1992 explicitly grants Baath Party members impunity for any damage caused to property or persons (including death and, presumably, including arrest and detention) in the pursuit of enemies of the State.

59. In relation to the economic and cultural rights of the Iraqi people, the Special Rapporteur has previously addressed the continuing destruction of the southern marsh area of Iraq which has resulted in the destruction of economic resources, including arable land through collateral flooding, and also the destruction of the habitat and traditional lifestyle of the Marsh Arab people. The Government insists that its programme to drain the marshes - the existence

of which it originally denied, preferring to ascribe responsibility to Turkish dams - is of long-standing and serves the interests of the population by increasing arable lands (A/49/394, para. 102). The Special Rapporteur observes that, so far, there is extremely little evidence of successful reclamation while, at the same time, there is indisputable evidence of widespread destruction and human suffering which have resulted in massive displacement, an influx of destitute refugees to the Islamic Republic of Iran, and the loss of a way of life for the Marsh Arab people. Moreover, notwithstanding the project designs of the 1950s to which the Government refers, it is to be observed that the Republic of Iraq subsequently acceded to numerous international human rights conventions which prohibit such acts, or prescribe requirements for their implementation, and that recent scientific opinion (for example, the detailed interdisciplinary study produced in May 1994 by the Wetland Ecosystems Research Group of the University of Exeter in England) indicates that implementation of the 1950s designs will in fact result in net losses rather than net benefits for the population of Iraq in the region and as a whole (not to mention the negative effects on riparian States).

60. Finally, on a general matter, the Special Rapporteur wishes to refute absolutely the accusation of the Government of Iraq that the Special Rapporteur is fulfilling a "political role ordained for [him]" and that the Special Rapporteur is "devoting his efforts to dividing Iraq" (A/49/394, para. 99). These attacks on the Special Rapporteur's personal integrity remain absurd in the absence of citation of a single concrete example and they fly in the face of the Special Rapporteur's constant and meticulous application of only those standards of international law which the State of Iraq has freely accepted or which are applicable as matters of international customary law. Moreover, the Special Rapporteur has applied these standards evenly throughout Iraq, has respected scrupulously the territorial integrity of the State of Iraq, and has only referred to regions or specific population groups in so far as Iraqi Government policy has been itself directed towards these regions or groups.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

61. In view of the events of the past year, the Special Rapporteur considers that his conclusions in his report to the Commission on Human Rights at its fiftieth session are more valid than ever (E/CN.4/1994/58, paras. 142-189). With respect to conclusions as to facts, the Special Rapporteur has found no evidence of significant change in any area upon which he has reported. Indeed, not only does he continue to receive reports of violations of almost all human rights, but there is clear evidence that the situation is worse in several respects. For example, violations in the southern marsh area of the country have accompanied further drainage and continuing military operations. A second example of government policy seriously violating human rights, and one which affects the population as a whole, is that of the issuing, in 1994, of a series of decrees which constitute an astounding public institution of cruel and unusual punishments. A further example of a government policy seriously violating human rights, again affecting virtually the whole population, is that of refusing to accept desperately needed medicaments and foodstuffs available through a United Nations supervised sale of oil.

62. Against the background of the terrible situation of human rights in Iraq, the Special Rapporteur has seen government cooperation with his mandate decline to the point of non-existence. At the same time, the Government has chosen to submit to United Nations organs its own views on the situation of human rights, in so doing either categorically denying allegations (and ignoring the supporting evidence) or seeking to excuse itself by making wholly inaccurate and misleading references, for example by quoting the Provisional Constitution and Code of Criminal Procedure as proof that there can be no arbitrary arrest in Iraq (see A/49/394, para. 14), while ignoring the existence of publicly pronounced powers of arrest and detention conferred upon Baath Party members pursuant to Revolution Command Council decrees. The Special Rapporteur concludes, therefore, that the Government does not appear to be prepared even to address the serious shortcomings in respect of human rights in Iraq, much less cooperate towards improving the situation.

63. Were the Government genuinely interested in addressing and resolving existing problems, the Special Rapporteur submits that there exist reliable means by which to establish the factual situation beyond doubt and also to proceed towards improving the situation. For example, in respect of establishing beyond doubt the situation in the southern marsh area of the country, especially the effects of drainage and displacement, the Special Rapporteur submits that an international team of recognized experts could be invited to the region. With unrestricted access throughout the region, over a sufficient period of time, the Special Rapporteur is confident that such a team would establish the facts of the situation beyond a reasonable doubt.

64. The Special Rapporteur is similarly confident that a team of United Nations human rights monitors would be able to determine beyond reasonable doubt the factual situation with respect to human rights throughout the country as a whole. However, it is of course to be pointed out that there can be no doubt as to the politico-legal organization of the Republic of Iraq or the laws which the Government has publicly declared and instituted. Indeed, with respect to the laws of Iraq it is remarkable that so many of the decrees are publicly known in so far as Law No. 78 of 1977 gives the President the power not to publish laws, or to issue them in special numbered series with restricted access, if he considers that the "supreme interest of the State" requires. None the less, most laws are publicly available. In the case of the recent decrees, which the Special Rapporteur has analysed above, their publication (and dissemination through the Iraqi media) is especially revealing of the situation of human rights in Iraq: publishing and broadcasting the decrees is clearly intended to make them effective by instilling fear throughout the population. The Special Rapporteur concludes that this is indicative of the method of government in Iraq. But, to remove any doubt as to the extent of the application of such laws and their effects, the Special Rapporteur reiterates that the stationing of human rights monitors throughout the country would constitute a reliable means of determining the facts beyond reasonable doubt. Moreover, if the Government is confident that the Special Rapporteur is mistaken in his reporting of the situation, then the deployment of human rights monitors in Iraq should pose no difficulty to the Government.

65. In the absence of the slightest sign of an improvement in the overall situation of human rights in Iraq, the Special Rapporteur concludes that his previous conclusions relating to the causes of human rights violations in

Iraq remain valid (see E/CN.4/1994/58, paras. 159-184). Specifically, the structure of power in Iraq is such that human rights violations are inevitable, since guarantees for protection are absent and the scope for abuse of power is enormous. Power is grossly abused on a daily and widespread basis. The Special Rapporteur submits that the decrees issued recently in Iraq irrefutably substantiate this conclusion.

66. Finally, the Special Rapporteur repeats his previous conclusion that there can be no doubt as to the State of Iraq's responsibility for the systematic violation of human rights in Iraq. Similarly, there can be no doubt as to the special and individual responsibility of senior members of the Iraqi Government for serious human rights violations over many years. In this last connection, the Special Rapporteur continues to receive information providing details of the personal involvement of a growing list of individuals within and around the ruling elite of Iraq in relation to various serious human rights violations. The Special Rapporteur observes that international law does not afford immunities to these persons for certain acts, including some in the highest echelons of Government, for their individual responsibility in certain of these incidents.

B. Recommendations

67. The Special Rapporteur regrets that he finds it necessary to repeat all of the recommendations made in his report to the Commission on Human Rights in 1994. He therefore, once again, recommends:

(a) That the Government of Iraq take immediate steps to bring the capacities and actions of its military and security forces into conformity with the standards of international law, in particular those of the International Covenant on Civil and Political Rights;

(b) That the Government of Iraq abrogate all laws granting impunity to specified forces or persons injuring or killing individuals for any purpose beyond the administration of justice under the rule of law as prescribed by international standards;

(c) That the Government of Iraq immediately establish a national commission on disappearances, take appropriate steps to cooperate closely with the Working Group on Enforced or Involuntary Disappearances to resolve those thousands of cases which have been submitted through this body, and otherwise cooperate fully in the resolution of cases of disappearance of Kuwaitis and third-country nationals who are said to have disappeared in detention during or subsequent to the Iraqi occupation of Kuwait;

(d) That the Government of Iraq take immediate and unequivocal steps to stop the practices of torture and other cruel, inhuman and degrading treatment or punishment;

(e) That all persons arbitrarily detained be immediately released and that steps be taken to compensate all those who have suffered arbitrary arrest, detention or other miscarriages of justice, especially under special courts such as the Revolutionary Court;

(f) That the Government of Iraq immediately abrogate all legislation and abolish all policies implementing punishments imposed on persons for the alleged crimes of family members and others in extended relationship to them;

(g) That steps be taken to restore the independence of the judiciary and to establish a constitutional court in order to make the executive subject to the rule of law;

(h) That the Government of Iraq take steps to facilitate the enjoyment of the freedoms of opinion, expression and association, in particular by decriminalizing the expression of oppositional views, relinquishing government controls over the media and literary and artistic communities, and permitting the formation of independently organized trade unions;

(i) That the Government of Iraq immediately remove all restrictions relating to the entry and exit of citizens to and from the country, including removal of the prohibitive exit tax;

(j) That the Government of Iraq review its citizenship law with a view to preventing the arbitrary or discriminatory withdrawal of citizenship, facilitating the repatriation of persons who were previously expelled from Iraq, and to extending full citizenship to the largest possible number of long-term residents who may otherwise be stateless;

(k) That the Government of Iraq abrogate all discriminatory legislation and cease all discriminatory policies which interfere with the free and equal enjoyment of property, and that those whose property has been arbitrarily or unjustly destroyed or confiscated be appropriately compensated;

(l) That the Government of Iraq end its internal economic embargoes on both the northern and southern regions and take steps to cooperate with international humanitarian agencies in the provision of relief to those in need throughout Iraq;

(m) That, especially in view of the extremely serious lack of food and medicine in the country, the Government of Iraq immediately act to take advantage of the "food for oil" formula provided in Security Council resolutions 706 (1991) and 712 (1991) which, as the Secretary-General has confirmed, would enable the Government to purchase hundreds of millions, if not billions, of dollars worth of urgently needed foodstuffs and medical supplies;

(n) That the Government of Iraq abrogate all laws discriminating against women and abide by its obligations pursuant to the Convention on the Elimination of All Forms of Discrimination against Women;

(o) That the Government of Iraq take steps to ensure that no person under the age of 18 is subjected to the death penalty;

(p) That, in the interest of ensuring that the Government of Iraq genuinely reflects the will of the people, steps be taken to render the executive accountable to the citizenry in a clear and meaningful way. Specifically, the institutions of Government should benefit from a separation of powers; unreasonable restrictions on the freedoms of opinion, expression

and association should be removed, along with the legislated "leading role" of the Baath Party; and the repressive restrictions contained in the Political Parties Act should be abolished;

(q) That, in fulfilment of its obligations pursuant to article 27 of the International Covenant on Civil and Political Rights, the Government of Iraq take steps to ensure the recognition and enjoyment of the rights of the Assyrian, Kurdish, Marsh Arab, Turkoman and other minorities;

(r) That the Government of Iraq immediately cease its periodic shelling of Kurdish agricultural lands, cooperate in the identification of minefields with a view to facilitating their marking and eventual clearing, cooperate with international aid agencies in the provision of humanitarian assistance to the northern Kurdish region, and take steps towards the peaceful settlement of the internal dispute;

(s) That, in relation to the southern marsh area and its Marsh Arab population, the Government of Iraq implement the recommendations made by the Special Rapporteur in his interim report to the General Assembly at its forty-eighth session (A/48/600, para. 82), including the immediate halting and reversal of the draining of the marshes and the cessation of its military activities against the civilian population of the area;

(t) That the Government of Iraq immediately cease its interference in the religious activities of the Shiah community and take steps to compensate it for damage and to locate the missing clergy and their families;

(u) That, considering the exceptional gravity of the situation of human rights in Iraq, the Government of Iraq agree to the stationing of human rights monitors throughout the country;

(v) That, irrespective of the position of the Government of Iraq with regard to the stationing of human rights monitors within the country, sufficient human and material resources be provided for the sending of human rights monitors to such locations as would facilitate improved information flow and assessment and would help in the independent verification of reports on the situation of human rights in Iraq.

68. The Special Rapporteur also finds it necessary to make the following additional recommendations:

(a) That the Government of Iraq immediately abrogate Revolution Command Council Decree Nos. 59, 70, 74, 76, 92, 93, 95, 96, 109, 115, 116, 117, 118, 120, 125, 130 and 145, together with all similar laws, decrees, regulations or orders;

(b) That, in relation to the southern marsh area of Iraq, the Government agree to the visit of an international team of recognized experts to establish the causes of the drainage of the marshes and its effects on the people and environment;

(c) That, notwithstanding the position of the Government of Iraq with respect to cooperation under Security Council resolutions 688 (1991), 706 (1991) and 712 (1991), the international community continue to contribute assistance to alleviate the humanitarian needs of the people.

Annex

SELECTED DECREES OF THE REVOLUTION COMMAND COUNCIL

[Original: Arabic]

Document No. 1

Decree No. 59

Date of Decree: 24 Dhul-Hijjah A.H. 1414/4 June 1994

Pursuant to the provisions of article 42, paragraph 1, of the Constitution, the Revolution Command Council has decreed as follows:

1. A penalty of amputation of the right hand from the wrist shall be imposed on anyone who commits any of the offences of theft specified in articles 440, 441, 442, 443, 444 and 445 of the Penal Code (Act No. 111 of 1969) and article 117 of the Military Penal Code (Act No. 13 of 1940) and anyone who commits the offence of stealing a vehicle. The left foot shall be amputated from the ankle in the event of a repeated offence.

2. The penalty shall be death instead of amputation if the theft is committed by a person carrying a visible or concealed weapon or if the offence leads to the death of a person.

3. The penalty of amputation shall not apply to crimes of theft in the following circumstances:

(a) If the value of the stolen article does not exceed 5,000 dinars;

(b) If the theft is committed between spouses or relatives to the second degree;

(c) If the perpetrator of the offence is a juvenile.

4. If the court believes that the circumstances of the offender or the offence referred to in paragraphs (a) and (b) of paragraph 3 of this Decree merit clemency in the light of the legally mitigating circumstances, it may impose a penalty of life imprisonment instead of death.

5. This Decree shall enter into force from the date of its publication in the Official Gazette until further notice.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 2

Decree No. 109

Date of Decree: 11 Rabi I A.H. 1415/18 August 1994

Pursuant to the provisions of article 42, paragraph 1, of the Constitution, the Revolution Command Council has decreed as follows:

1. Every person legally punished by amputation of the hand for a crime punishable by amputation of the hand shall be tattooed with a cross between the eyebrows. Each intersecting line of the cross shall be 1 centimetre in length and 1 millimetre thick.

2. The tattoo shall be carried out in the same public hospital in which the amputation was performed.

3. The public hospital shall prepare the technical and medical requirements to facilitate the performance of the tattooing procedure.

4. This Decree shall enter into force from the date of its publication in the Official Gazette until further notice, and shall apply retroactively to every person who has already been punished by amputation of the hand.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 3

Decree No. 115

Date of Decree: 18 Rabi I A.H. 1415/25 August 1994

Pursuant to the provisions of article 42, paragraph 1, of the Constitution, the Revolution Command Council has decreed as follows:

1. The auricle of one ear shall be cut off any person committing the following crimes:

(a) Evading to perform military service;

(b) Deserting from military service;

(c) Sheltering or protecting anyone who has evaded or deserted from military service.

2. The auricle of the other ear shall be cut off in the case of a second offence involving any of the crimes specified in paragraph 1 of this Decree.

3. A horizontal line 1 millimetre thick and no less than 3 centimetres and no more than 5 centimetres long shall be tattooed on the forehead of every person whose ear has been cut off.

4. The cutting off of the auricle of the ear, and the tattooing, shall be performed in accordance with the directives to be issued by the Office of the President in this respect.

5. Death by firing squad shall be the penalty for anyone who:

(a) Has deserted from military service three times;

(b) Has evaded military service and subsequently deserted twice;

(c) Has three times protected or sheltered any deserter from or evader of military service.

6. For the purposes of the application of the provisions of this Decree, a deserter shall be considered to be any person who has been absent from his unit without authorized leave for more than 15 days.

7. (a) These legal processes shall not apply to any evader of or deserter from military service who surrenders within seven days of the date of the promulgation of this Decree to authorities to be specified by the Office of the President.

(b) The period specified in paragraph (a) of this article shall be 30 days for anyone outside Iraq.

8. The provisions of this Decree shall apply to those who evaded or deserted from military service prior to the promulgation of this Decree, should they fail to surrender themselves within the period specified in article 7 of this Decree.

9. The authorities competent to implement the provisions of this Decree shall be specified by the Office of the President.

10. (a) This Decree shall enter into force from the date of its promulgation until further notice.

(b) Any text which conflicts with the provisions of this Decree shall be null and void.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 4

Decree No. 96

Date of Decree: 19 Safar 1415 A.H./28 July 1994

In accordance with the provisions of article 42, paragraph (a), of the Constitution, the Revolution Command Council has decreed as follows:

I. Offences punishable by the penalty of amputation of the hand or the foot shall be deemed to constitute felonies.

II. If a criminal court sentences a convicted person to amputation of the hand or the foot, it must send the case file to the headquarters of the Department of Public Prosecutions within 10 days from the date on which the sentence was passed. The Department of Public Prosecutions must examine the file and submit its comments and petitions in that connection to the Court of Cassation, for consideration, within 15 days.

III. The person sentenced to the penalty of amputation shall be placed in the custody of the Adult Reform Department until the procedures required for enforcement of the sentence have been completed.

IV. The penalty of amputation shall be carried out at a public hospital designated by the Ministry of Health at Baghdad or in any governorate and shall be witnessed by the Enforcement Board consisting of a judge, a member of the Department of Public Prosecutions and a representative of the Ministry of the Interior and of the Ministry of Labour and Social Affairs.

V. The public hospital at which the penalty of amputation is carried out shall make available the technical medical requisites needed to facilitate the enforcement of this penalty.

VI. In the case of a pregnant woman, enforcement of the penalty of amputation shall be deferred until four months after her delivery.

VII. This Decree shall enter into force from date of its publication in the Official Gazette until further notice.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 5

Decree No. 70

Date of Decree: 12 Muharram 1415 A.H./21 June 1994

In accordance with the provisions of article 42, paragraph (a), of the Constitution, the Revolution Command Council has decreed as follows:

I. 1. The leadership of the local section of the Arab Baath Socialist Party and the people's council in any district shall each be empowered to detain, for a period of one year, anyone who monopolizes, by hoarding and refusing to sell, any commodity similar to those listed on the ration card. A repeated offence shall be punished by detention for a period of three years, with closure of the establishment and cancellation of the licences issued to it. Such decisions shall be taken by a majority vote.

2. The penalties prescribed in paragraph 1 above shall apply to any farmer who refuses to sell cereals to the competent official body.

II. The detainee may lodge an appeal with the branch leadership against such a decision taken against him by the section leadership and with the higher controlling authority against such a decision taken by a people's council. Such appeal must be submitted in writing by himself or his representative within one week from the date on which the decision is announced and the body with which the appeal is lodged must consider it within one week from the date of its submission and, by a majority vote, may approve or annul the contested decision. Its ruling on this matter shall be final.

III. The section leadership or the people's council in the district shall notify the local police station of its decision and shall send a copy thereof directly to the Director-General of Police and also to the ministries concerned, through the Office of the Regional Secretary in the case of sections of the Party and through the higher controlling authority in the case of people's councils.

IV. The leadership of subsections of the Party and people's councils in subdistricts shall be vested with the powers specified in clauses I and III above. With regard to appeal, their decisions shall be subject to the provisions set forth in clause II of this Decree.

V. If the act referred to in clause I of this Decree constitutes sabotage of the national economy and causes severe detriment to the public interest, the person accused, regardless of whether he is an adult or a minor, shall be referred to the examining magistrate and measures shall be taken against him in accordance with the Code of Criminal Procedure on the expiration of the period of detention prescribed in paragraph 1 of clause I of this Decree.

VI. The penalty for the act referred to in clause V of this Decree shall be amputation of the right hand from the wrist and, in the event of a repeated offence, amputation of the left foot from the ankle.

VII. The penalty prescribed in clause VI of this Decree shall not be applied if the perpetrator of the offence is a minor. In such a case, the penalty shall be confinement for a period of 7-15 years.

VIII. This Decree shall enter into force from the date of its publication in the Official Gazette until further notice.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 6

Decree No. 74

Date of Decree: 14 Muharram 1415 A.H./23 June 1994

In accordance with article 42, paragraph (a), of the Constitution, the Revolution Command Council has decreed as follows:

I. The leadership of the local section of the Arab Baath Socialist Party and the people's council in any district shall each be empowered to detain, for a period of one to three years, anyone who sells or purchases foreign currency outside the licensed offices or, to that end, conspires with employees of licensed offices or banks. In the event of a repeated offence, the period of detention shall be five years. In both cases, the detention decision shall be taken by a majority vote.

II. The detainee may lodge an appeal with the branch leadership against such a decision taken against him by the section leadership and with the higher controlling authority against such a decision taken by a people's council. Such appeal must be submitted in writing by himself or his representative within one week from the date on which the decision is announced and the body with which the appeal is lodged must consider it within one week from the date of its submission and, by a majority vote, may approve or annul the contested decision. Its ruling on this matter shall be final.

III. The section leadership or the people's council in the district shall notify the local police station of its decision to detain and shall send a copy thereof directly to the Director-General of Police and also to the Central Bank, through the Office of the Regional Secretary in the case of sections of the Party, and through the higher controlling authority in the case of people's councils, together with the currency that has been seized so that it can be confiscated after the decision has become final.

IV. The leadership of subsections of the Party and the people's councils in subdistricts shall be vested with the powers specified in clauses I and III above. With regard to appeal, their decisions shall be subject to the provisions set forth in clause II of this Decree.

V. If the bodies referred to in clauses I and IV find that the act specified in clause I of this Decree constitutes sabotage of the national economy and causes severe detriment to the public interest, they may refer the person accused to the competent court so that measures can be taken against him in accordance with the law.

VI. The penalty for the act referred to in clause V of this Decree shall be amputation of the right hand from the wrist and, in the event of a repeated offence, amputation of the left foot from the ankle.

VII. The penalty prescribed in clause VI of this Decree shall not be applied if the perpetrator of the offence is a minor. In such a case, the penalty shall be confinement for a period of 7-15 years.

VIII. This Decree shall enter into force from the date of its publication in the Official Gazette until further notice.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 7

Decree No. 120

Date of Decree: 20 Rabi I 1415 A.H./27 August 1994

In accordance with the provisions of article 42, paragraph (a), of the Constitution, the Revolution Command Council has decreed as follows:

I. No person convicted of the offence of embezzlement or theft of State funds, or of any other deliberate offence involving such funds, shall be released after serving his sentence unless the said funds or the assets into which they have been converted or for which they have been exchanged, or their value, have been recovered from him.

II. The convicted person referred to in clause I above shall not be entitled to benefit from the provisions concerning release on probation, nor shall he be covered by general amnesty enactments or decrees mitigating penalties.

III. The provisions of this Decree shall apply to cases that are still at the stage of examination or trial and also to judgements that have become final.

IV. Any text of a legislative act or decree that is incompatible with the provisions of this Decree shall no longer be applied.

V. This Decree shall enter into force from the date of its publication in the Official Gazette until further notice.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 8

Decree No. 125

Date of Decree: 21 Rabi I 1415 A.H./28 August 1994

In accordance with the provisions of article 42, paragraph (a), of the Constitution, the Revolution Command Council has decreed as follows:

I. Foreign currency in which dealings are found to have taken place outside the offices and commercial bank branches licensed to engage in exchange transactions shall be confiscated, in addition to the penalties prescribed in Revolution Command Council Decree No. 74 of 23 June 1994.

II. A proportion of one per cent of the confiscated currency shall be paid to the person who arrested the offender dealing in foreign currency outside licensed offices and bank branches. This proportion shall be divided equally between him and the person, if any, who reported the offence.

III. This Decree shall enter into force from the date of its publication in the Official Gazette until further notice.

Saddam HUSSEIN
Chairman of the Revolution Command Council

Document No. 9

Decree No. 130

Date of Decree: 23 Rabi I 1415 A.H./30 August 1994

In accordance with the provisions of article 42, paragraph (a), of the Constitution, the Revolution Command Council has decreed as follows:

I. The Principal Private Secretary of the President shall be empowered to form a commission to investigate one or more specific offences. The commission shall be vested with the powers of an examining magistrate.

II. This Decree shall be published in the Official Gazette and the bodies concerned shall be responsible for its implementation.

Saddam HUSSEIN
Chairman of the Revolution Command Council